

Moved by McKenzie

Seconded by Hill

IN THE SENATE  
SENATE AMENDMENT TO H.B. NO. 155

AMENDMENT TO THE BILL

On page 1 of the printed bill, delete lines 6 through 42; and delete page 2, and insert:

"SECTION 1. That Sections 74-206 and 74-208, Idaho Code, as added in Section 5, House Bill No. 90, as enacted by the First Regular Session of the Sixty-third Idaho Legislature, be, and the same is hereby amended to read as follows:

74-206. EXECUTIVE SESSIONS -- WHEN AUTHORIZED. (1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

(a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;

(c) To ~~conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;~~

(d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law; ~~or~~

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement; or

(j) To consider labor contract matters authorized under section 74-206A(1) (a) and (b), Idaho Code.

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 74-204, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

74-208. VIOLATIONS. (1) If an action, or any deliberation or decision-making that leads to an action, occurs at any meeting which fails to comply with the provisions of this chapter, such action shall be null and void.

(2) Any member of the governing body governed by the provisions of this chapter, who conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00).

(3) Any member of a governing body who knowingly violates the provisions of this chapter shall be subject to a civil penalty not to exceed one thousand five hundred dollars (\$1,500).

(4) Any member of a governing body who knowingly violates any provision of this ~~act~~ section and who has previously admitted to committing or has been previously determined to have committed a violation pursuant to subsection (3) of this act section within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500).

(5) The attorney general shall have the duty to enforce this chapter in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(6) Any person affected by a violation of the provisions of this chapter may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action

brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of the provisions of this chapter. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

(7) (a) A violation may be cured by a public agency upon:

(i) The agency's self-recognition of a violation; or

(ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.

(b) Following the public agency's acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

(c) All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.

(d) A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.

SECTION 2. That Chapter 4, Title 74, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 74-206A, Idaho Code, and to read as follows:

74-206A. NEGOTIATIONS IN OPEN SESSION. (1) All negotiations between a governing body and a labor organization shall be in open session and shall be available for the public to attend. This requirement also applies to negotiations between the governing body's designated representatives and representatives of the labor organization. This requirement shall also apply to meetings with any labor negotiation arbitrators, mediators or similar labor dispute meeting facilitators. Provided, however, a governing body or its designated representatives may hold an executive session for the specific purpose of:

1 (a) Considering a labor contract offer or to formulate a counteroffer;  
2 or

3 (b) Receiving information about a specific employee, when the informa-  
4 tion has a direct bearing on the issues being negotiated and a reason-  
5 able person would conclude that the release of that information would  
6 violate that employee's right to privacy.

7 (2) All documentation exchanged between the parties during negoti-  
8 ations, including all offers, counteroffers and meeting minutes shall be  
9 subject to public writings disclosure laws.

10 (3) Any other provision of law notwithstanding, including any other  
11 provisions to the contrary in sections 33-402 and 67-2343, Idaho Code, the  
12 governing body shall post notice of all negotiation sessions at the earli-  
13 est possible time practicable. This shall be done by the governing body by  
14 immediately posting notice of the negotiation session on the front page of  
15 its official website. If time permits, the governing body shall also post  
16 notice within twenty-four (24) hours at its regular meeting physical posting  
17 locations.

18 (4) Public testimony, if any, shall be posted as an agenda item.

19 SECTION 3. That Section [33-1273A](#), Idaho Code, be, and the same is hereby  
20 repealed.

21 SECTION 4. That Section 74-206, Idaho Code, be, and the same is hereby  
22 repealed.

23 SECTION 5. That Chapter 2, Title 74, Idaho Code, be, and the same is  
24 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
25 ignated as Section 74-206, Idaho Code, and to read as follows:

26 74-206. EXECUTIVE SESSIONS -- WHEN AUTHORIZED. (1) An executive ses-  
27 sion at which members of the public are excluded may be held, but only for the  
28 purposes and only in the manner set forth in this section. The motion to go  
29 into executive session shall identify the specific subsections of this sec-  
30 tion that authorize the executive session. There shall be a roll call vote on  
31 the motion and the vote shall be recorded in the minutes. An executive ses-  
32 sion shall be authorized by a two-thirds (2/3) vote of the governing body. An  
33 executive session may be held:

34 (a) To consider hiring a public officer, employee, staff member or in-  
35 dividual agent, wherein the respective qualities of individuals are to  
36 be evaluated in order to fill a particular vacancy or need. This para-  
37 graph does not apply to filling a vacancy in an elective office or deliber-  
38 ations about staffing needs in general;

39 (b) To consider the evaluation, dismissal or disciplining of, or to  
40 hear complaints or charges brought against, a public officer, employee,  
41 staff member or individual agent, or public school student;

42 (c) To conduct deliberations concerning labor negotiations or to ac-  
43 quire an interest in real property which is not owned by a public agency;

44 (d) To consider records that are exempt from disclosure as provided in  
45 chapter 1, title 74, Idaho Code;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 74-204, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

SECTION 6. The provisions of Sections 4 and 5 shall be in full force and effect on and after July 1, 2020."

#### CORRECTION TO TITLE

On page 1, delete lines 2 through 4, and insert:

"RELATING TO THE OPEN MEETING LAW; AMENDING SECTIONS 74-206 AND 74-208, IDAHO CODE, AS ADDED IN SECTION 5, HOUSE BILL NO. 90, AS ENACTED BY THE FIRST REGULAR SESSION OF THE SIXTY-THIRD IDAHO LEGISLATURE, TO REMOVE PROVISIONS RELATING TO LABOR NEGOTIATIONS CONDUCTED IN EXECUTIVE SESSION AND TO PROVIDE THAT CONSIDERATION OF CERTAIN LABOR CONTRACT OFFERS MAY BE HELD IN EXECUTIVE SESSION, TO INCREASE MONETARY CIVIL PENALTIES FOR VIOLATIONS OF THE OPEN MEETING LAW AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 2, TITLE 74, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 74-206A, IDAHO CODE, TO ESTABLISH PROVISIONS RELATING TO NEGOTIATIONS IN OPEN SESSION, TO PROVIDE THAT AN EXECUTIVE SESSION MAY BE HELD FOR CERTAIN SPECIFIC PURPOSES, TO PROVIDE THAT CERTAIN DOCUMENTS EXCHANGED BETWEEN PARTIES SHALL BE SUBJECT TO PUBLIC WRITINGS DISCLOSURE LAWS, TO PROVIDE FOR NOTICE AND TO PROVIDE THAT PUBLIC TESTIMONY SHALL BE POSTED AS AN AGENDA ITEM; REPEALING SECTION 33-1273A, IDAHO CODE, RELATING TO NEGOTIATIONS IN OPEN SESSION; REPEALING SECTION 74-206, IDAHO CODE, RELATING TO EXECUTIVE SESSIONS; AND AMENDING CHAPTER 2, TITLE 74, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 74-206,

1 IDAHO CODE, TO PROVIDE WHEN AN EXECUTIVE SESSION MAY BE HELD AND PROVID-  
2 ING EFFECTIVE DATES.".